

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 83-2627

IN RE REILLY TAR & CHEMICAL CORPORATION,

Defendant-Petitioner.

REPLY OF REILLY TAR & CHEMICAL
CORPORATION IN SUPPORT OF ITS
PETITION FOR WRIT OF MANDAMUS

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ARGUMENT IN REPLY

In their responses to Reilly Tar & Chemical Corporation's ("Reilly") Petition for a Writ of Mandamus, the State of Minnesota ("State") and, by adoption of the State's position, the United States, have mischaracterized the position of Reilly with regard to the issues in its defense of settlement, even as they previously did before the District Court. To set the issues straight, Reilly proffers this brief Reply.

The State's response is premised on the assumption that the District Court was correct in its view of contract law and will be so upheld on appeal. Thus begging the question, the State dismisses other aspects of Reilly's argument as "not material" and the consequences of the

ruling as not showing any inequities to Reilly or serious consequences for judicial economy.

The State's defense of the District Court's ruling characterizes that ruling as one in which the District Court simply found that there was no material factual dispute as to the existence of any objective manifestations of the State's assent to the settlement. In fact, however, the record discloses and the District Court acknowledges the existence of several actions and inactions on the part of the State from which it could reasonably be inferred that the State had assented to the settlement. Reduced to simple terms, the situation was this: the State had told Reilly through the attorney for St. Louis Park that it, the State, would accept any settlement reached between Reilly and St. Louis Park. Whether or not this was itself an offer of settlement, it was at the very least a solicitation for an offer. Reilly then negotiated the Purchase Agreement with St. Louis Park as a settlement of the lawsuit and a full transfer of the property, "as is," to St. Louis Park. If reaching this agreement did not itself consummate the settlement vis-a-vis the State, at the very least it was Reilly's offer of settlement in response to the State's solicitation which Reilly expected St. Louis Park to communicate to the State. The State then manifested its acceptance of that offer by the various actions and inactions discussed in the Petition, pages 13 to 35; 41-42; 47-48,

and including the failure to disclaim the Purchase Agreement as a final settlement when it was signed in 1972 and during the time that Reilly's refinery was being demolished pursuant thereto in the summer of 1972.^{1/}

The objective fact of these events, or lack thereof, which Reilly contends form manifestations of assent, is not in dispute. What is in dispute is whether or not these objective facts manifest the assent of the State to the settlement, or something else. That is a matter of inference, and what is the proper inference to be drawn is a matter for the trier of fact after all relevant evidence has been discovered and adduced.^{2/}

^{1/} The State's argument concerning the non-delegability of the legal authority of the State (see Response of the State of Minnesota at p. 3 n.6) is no more than a red herring. No authority to conduct legal business need have been delegated to St. Louis Park to support Reilly's defense; Reilly and the City worked out the details - the City with the blessings of the State - but the State assented to the deal on its own, and manifested that assent as described herein and in the Petition.

^{2/} The State in its Response has also mischaracterized the answers given by Reilly in response to the State's Request for Admissions. For example, the State asserts that Reilly's answers state that "it knows of no evidence of the other party's assent to the agreement." (Response of State at 24-25). As shown here and in the Petition, Reilly submitted to the Court and the parties such objective facts as it was presently aware of, prior to completion of discovery, which Reilly believes manifest the State's assent. What Reilly told the State in its Response to the State's Request for Admissions was that Reilly admitted the State was not a signatory to the Purchase Agreement, but denied that the State had not assented to the settlement.

As Reilly has shown in its Petition, it is entirely proper - and, indeed, necessary - in a case such as this of implied contract of settlement to inquire into the "subjective intentions" of the parties as an aid to the trier of fact in determining what inference is properly drawn from the objective facts. Krueger v. State Dept. of Highways, 295 Minn. 514, 202 N.W.2d 873 (1972); Kabil Development Corp. v. Mignot, 279 Ore. 151, 566 P.2d 505 (1977). See Petition at pp. 50-51. The District Court, both by the fact of its ruling and the manner of it, departed not only from the substantive law (which the State argues is all that is really at issue), but from fair procedures as well. The District Court itself drew inferences from the objective facts which Reilly contends manifest an assent to settlement and thereby ruled that those facts do not constitute assent. It not only erred by usurping the role of the trier of fact on a summary judgment motion, it compounded the error of drawing inferences by drawing them against Reilly, the nonmoving party, by drawing them before all available evidence relevant to the point had been found through discovery, and by drawing them in

Footnote 2/ continued

(See Response to First Request for Admissions with Interrogatories served by State of Minnesota on Reilly Tar & Chemical Corporation, a copy of which is attached hereto as a Supplemental Appendix.) Asked to submit all of its evidence thereof, Reilly indicated that it could not, inasmuch as discovery was still continuing. (Id.) When the State sought summary judgment rather than a discovery conference concerning that evidence, Reilly submitted to the State and to the Court the evidence it then had, and later amended its Response to the Requests for Admissions to reflect that submission. (A-90).

reliance on conclusory affidavits favoring the State's position from its former lawyers who had refused to allow Reilly to depose them on the very points asserted in the affidavits, and from whom Reilly was at that very time asking the Court to compel discovery.^{3/} To deny Reilly the right to complete its deposition of Lindall and to question him, for example, as to whether in 1972 he knew that the plant was being demolished, but failed to tell Reilly that the sale to St. Louis Park was not a satisfactory settlement of the State's claims, is to deny Reilly its fundamental right of cross examination. There is already evidence in the record that Lindall was advised in July of 1972 that Reilly had discontinued its operations. RTC ex. 33 (A-58).

As Reilly has discussed in its Petition, these errors are of serious magnitude, are wide departures from the fairness assured litigants by the rules for determining summary judgment motions, and merit this Court's attention and the exercise of its power of supervisory mandamus. Contrary to the view of the State, they do seriously affect the equities of Reilly's trial position and judicial economy

^{3/} Contrary to the State's assertion and its citation of Wallace v. Brownell Pontiac-GMC Company, Inc., 703 F.2d 525 (11th Cir. 1983), Reilly is not arguing for a blanket rule that summary judgment may never be granted before discovery is complete. As the court ruled in Parrish v. Bd. of Commissioners of the Alabama State Bar, 533 F.2d 942 (5th Cir. 1976), however, summary judgment may not be properly granted when the outstanding discovery is relevant to the decision of a material issue. That is the case here, as shown above and in the Petition.

in this major litigation: The State argues that the fact of settlement is all that is at issue in this ruling, and that neither the scope of the settlement nor its effect as a bar are of present consequence. But this begs the question again by assuming the correctness of the District Court's ruling and the likelihood of its being upheld on appeal. If, as Reilly contends, the District Court was incorrect, the scope of the settlement and its effect as a bar must be addressed. Any retrial following remand would thus be concerned with determining several issues for which the evidence proffered would be substantially similar to that relevant to issues remaining in the case.^{4/}

^{4/} As Reilly has shown in its Petition at pp. 4-6; 57-59, evidence which will be relevant to several issues remaining in the case, such as the proper extent of any remedy under CERCLA, the declaratory judgment sought by St. Louis Park construing the hold harmless agreement, the cross-claim of St. Louis Park against the State, and Reilly's defenses against St. Louis Park based on the hold harmless and purchase agreements, is substantially intertwined with evidence relevant to the scope, effect, and, indeed, the fact of the settlement with the State. Contrary to the inference contained in the brief of the United States, the State's claim in intervention raises a good deal more than its desire to be reimbursed for ten percent of the clean-up costs. The State is also making a claim under § 107(c) of CERCLA for damage to "natural resources," defined by § 101(16) to include groundwater controlled by a State or local government. Since Minn. Stat. §§ 105.37 Subd. 7 and 105.403-41 give the State broad authority with respect to all groundwater in or under the State, this case involves a very substantial claim by Minnesota for damage to the same St. Louis Park groundwater which the Federal Government proposes to clean up. In addition, the State is making a claim under § 112 of CERCLA for reimbursement of very substantial sums of money appropriated by the Minnesota Legislature and expanded by the State to investigate potential remedies in St. Louis Park. These pre-CERCLA

Moreover, to the extent that this peremptory ruling by the District Court has cut off discovery,^{5/} not only retrial but rediscovery will be necessary as well.

CONCLUSION

Reilly recognizes that mandamus is an extraordinary remedy, but the District Court's departure at the urging of the State from accepted, fair procedure in this ruling is extraordinary, as are its ramifications for Reilly and for the ultimate conduct of this suit. Contrary to the assertions of the State, Reilly is not simply seeking

Footnote 4/ continued

State expenditures have been allowed by the EPA as "credits" against the State's share of the remedial costs. Reilly will argue that these claims of the State of Minnesota, in addition to other substantial monetary claims asserted by St. Louis Park, were covered by the 1972 settlement. Under these circumstances, it is hard to conceive of a situation where the claims of the respective parties are more inextricably bound together. See also Reilly's Petition, pp. 2-9 and 56-60.

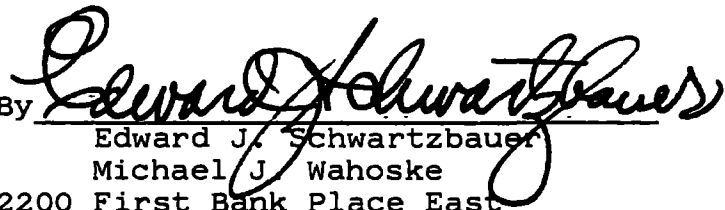
5/ At least some of the discovery would involve redeposing the same witnesses: For example, the lawyers at the time for the State and St. Louis Park possess relevant evidence both as to the fact of settlement and the scope of the original suit, a matter which remains relevant to such issues as St. Louis Park's request for declaratory judgment and Reilly's defenses over against St. Louis Park. The letter from St. Louis Park's lawyer to Mr. St. Vrain dated January 5, 1984, asserting that the issues in 1970 were somehow different from the issues in today's lawsuit eloquently supports Reilly's position that it must be permitted to depose the lawyers who handled the 1970 litigation to establish the scope of that litigation and both the existence and the scope of this three-party settlement.

relief from what the District Court has done - i.e., from its ruling which Reilly believes is legally incorrect. Reilly seeks relief from this Court from the manner in which the District Court made its ruling, and from the effects thereof on Reilly in particular and on this case in general. Accordingly, Reilly respectfully requests that this Court issue a supervisory writ of mandamus pursuant to 28 U.S.C. § 1651 directing the District Court to vacate its order granting summary judgment on the Second Affirmative Defense of Reilly Tar & Chemical Corporation.

Dated: January 12, 1984.

Respectfully submitted,

DORSEY & WHITNEY

By 

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SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its Attorney
General Hubert H. Humphrey, III,
its Department of Health, and its
Pollution Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,
INC.; and PHILIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Civil No. 4-80-469)

RESPONSE TO FIRST
REQUEST FOR ADMISSIONS
WITH INTERROGATORIES
SERVED BY STATE OF
MINNESOTA ON REILLY
TAR & CHEMICAL
CORPORATION

REQUEST FOR ADMISSION NO. 1: That Reilly Tar & Chemical Corporation ("Reilly Tar") and the City of St. Louis Park ("City") entered into an "Agreement for the Purchase of Real Estate" on April 14, 1972 ("Purchase Agreement.")

RESPONSE: Admit.

ALTERNATIVE INTERROGATORY NO. 1: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support those facts.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 2: That prior to execution of the Purchase Agreement, Reilly Tar never submitted to the State of Minnesota ("State") any copies or drafts of the Purchase Agreement.

RESPONSE: Admit.

ALTERNATIVE INTERROGATORY NO. 2: If you deny the truth of this statement, please identify the person(s) at the State to whom such copies or drafts were submitted, identify the person(s) who submitted such copies or drafts, state where and when such copies or drafts were submitted and attach reproductions of all such copies or drafts.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 3: That prior to execution of the Purchase Agreement, the City never submitted to the State any copies or drafts of the Purchase Agreement.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 3: If you deny the truth of this statement, please identify the person(s) at the State to whom such copies or drafts were submitted, identify the person(s) who submitted such copies or drafts, state where and when such copies or drafts were submitted and attach reproductions of all such copies or drafts.

RESPONSE: Inasmuch as discovery concerning this matter has not yet been completed, Reilly is at present unable to respond to this Interrogatory.

REQUEST FOR ADMISSION NO. 4: That the State did not review either the Purchase Agreement or any drafts of the Purchase Agreement prior to its execution by the City and Reilly Tar.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 4: If you deny the truth of this statement, please identify the person(s) at the State who reviewed either the Purchase Agreement or drafts of the Purchase Agreement, state when it was reviewed, and identify by name and address each person who may provide information to support the denial.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 5: That no person having authority to represent the State submitted to Reilly Tar any comments, either oral or written, on the Purchase Agreement prior to its execution by the City and Reilly.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 5: If you deny the truth of this statement, please identify the person(s) who submitted the comments to Reilly Tar, identify the person(s) who received the comments, state where and when these comments were submitted and attach reproductions of all written comments submitted to Reilly Tar.

RESPONSE: Thomas E. Reiersgord had conversations with Robert Lindall concerning the dismissal of the case from the active calendar. Reiersgord advised Lindall of the nature of the settlement being discussed, and it was agreed that the case should be dismissed so that these discussions could continue. In addition, see Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 6: That the State is not a party to the Purchase Agreement.

RESPONSE: Reilly admits the State is not a signatory to the Purchase Agreement.

ALTERNATIVE INTERROGATORY NO. 6: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support such facts.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 7: That paragraph 9 of the Purchase Agreements provides as follows:

9. Current Litigation. It is understood that this agreement represents a means of settling the issues involved in State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs, vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767. It is understood that the City of St. Louis Park will deliver dismissals with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing. Defendant Reilly Tar & Chemical Corporation will deliver a dismissal of its counterclaim with prejudice and without cost to plaintiffs.

RESPONSE: Admit.

ALTERNATIVE INTERROGATORY NO. 7: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support such facts.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 8: That the Minnesota Pollution Control Agency, as statutorily constituted and described in Minn. Stat. § 116.02 (1982), has never considered or voted on the issue of settlement of the litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant,) Hennepin County Minnesota District Court Civil File No. 670767, at any of its regularly scheduled or specially held meetings.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 8: If you deny the truth of this statement, please state when and where the meeting was held and attach a copy of any resolution, motion or minutes which support your statements.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 9: That the City never delivered to Reilly Tar a Dismissal with Prejudice, executed by the State, of the litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court File No. 670767.

RESPONSE: Reilly admits no written dismissal executed by the State was delivered to it by the City.

ALTERNATIVE INTERROGATORY NO. 9: If you deny the truth of this statement, identify by name and address each person who may provide information to support the denial, and attach a copy of the Dismissal with Prejudice.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 10: That the State never executed a Dismissal with Prejudice of the litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File NO. 670767.

RESPONSE: Reilly admits no written dismissal was executed by the State.

ALTERNATIVE INTERROGATORY NO. 10: If you deny the truth of this statement, please state the facts upon which you rely for such denial, identify by name and address each person who may provide information to support the denial, and attach a copy of the Dismissal with Prejudice.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 11: That there exists no written evidence indicating that, prior to or at the time of the execution of the Purchase Agreement by the City and Reilly Tar, the State accepted the Purchase Agreement as settlement to the litigation referred to as State of Minnesota, by the

Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 11: If you deny the truth of this statement, please state the facts upon which you rely for such denial, identify by name and address any person who may provide information to support the denial, and attach a copy of all written evidence indicating the State accepted the Purchase Agreement as settlement.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 12: That there exists no verbal communication or other non-written evidence indicating that, prior to or at the time of the execution of the Purchase Agreement by the City and Reilly Tar, the State accepted the Purchase Agreement as settlement to the litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 12: If you deny the truth of this statement, please describe the nature of the communication or other non-written evidence, identify the person(s) initiating the communication or other non-written evidence and the person(s) receiving the communication or other non-written evidence, state where and when the communication or other non-written evidence was transmitted and identify by name and address each other person who may provide information to support the denial.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 13: That there exists no written evidence indicating that, after the time of the execution of the Purchase Agreement by the City and Reilly Tar, the State accepted the Purchase Agreement as settlement to the

litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 13: If you deny the truth of this statement, please state the facts upon which you rely for such denial, identify by name and address any person who may provide information to support the denial, and attach a copy of all written evidence indicating the State accepted the Purchase Agreement as settlement.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 14: That there exists no verbal communication or other non-written evidence indicating that, after the execution of the Purchase Agreement by the City and Reilly Tar, the State accepted the Purchase Agreement as settlement to the litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 14: If you deny the truth of this statement, please describe the nature of the communication or other non-written evidence, identify the person(s) initiating the communication or other non-written evidence and the person(s) receiving the communication or other non-written evidence, state where and when the communication or other non-written evidence was transmitted and identify by name and address each other person who may provide information to support the denial.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 15: That the State never agreed to settle the action referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation,

Defendant, Hennepin County Minnesota District Court Civil File No. 670767.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 15: If you deny the truth of this statement, please state the facts upon which you rely for such denial, identify by name and address each person who may provide information to support such facts, and attach any documents which support such facts.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 16: That on or about June 14, 1973, the City and Reilly Tar executed and entered into a "Hold Harmless Agreement" ("Hold Harmless Agreement").

RESPONSE: Admit.

ALTERNATIVE INTERROGATORY NO. 16: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support such facts.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 17: That, in addition to other recitals, the Hold Harmless Agreement, recites the following as its factual bases:

. . .

WHEREAS, the City agreed in the Agreement of April 14, 1972 that it would deliver dismissals of the above noted action [Hennepin County District Court Civil File No. 670767] with prejudice and without cost to defendant executed by itself and by the Plaintiff State of Minnesota at closing;

WHEREAS, the Plaintiff State of Minnesota has refused at this time to deliver a dismissal of its complaint;

. . . .

RESPONSE: Reilly admits that the language quoted is contained in the Hold Harmless Agreement.

ALTERNATIVE INTERROGATORY NO. 17: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support such fact.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 18: That one reason the City and Reilly Tar entered into the Hold Harmless Agreement was because the State refused to settle the litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil NO. 670767.

RESPONSE: Deny. See Response to Alternative Interrogatory No. 3.

ALTERNATIVE INTERROGATORY NO. 18: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support such facts.

RESPONSE: See Response to Alternative Interrogatory No. 3.

REQUEST FOR ADMISSION NO. 19: That on June 18, 1973, Wayne G. Popham, Popham, Haik, Schnobrich, Kaufman & Doty, attorneys for the City, executed a Dismissal with Prejudice of the litigation referred to as State of Minnesota, by the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767, which dismissal provides, in full, as follows:

This action, having been settled as between the City of St. Louis Park, one of the party plaintiffs and Reilly Tar and Chemical Corporation, defendant, insofar as it seeks any remedy on behalf of the City of St. Louis Park, is hereby dismissed with prejudice and without cost to either the City of St. Louis Park or defendant Reilly Tar and Chemical Corporation.

RESPONSE: Admit.

ALTERNATIVE INTERROGATORY NO. 19: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support such facts.

RESPONSE: Not applicable.

REQUEST FOR ADMISSION NO. 20: That on June 18, 1973, Thomas E. Reiersgord, attorney for Reilly Tar, executed a Dismissal with Prejudice of the litigation referred to as State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar & Chemical Corporation, Defendant Hennepin County Minnesota District Court Civil File No. 670767, which dismissal provides, in full, as follows:

This action, having been settled as between the City of St. Louis Park, one of the party plaintiffs and Reilly Tar and Chemical Corporation, defendant, insofar as it seeks any remedy on behalf of Reilly Tar and Chemical Corporation in its Counterclaim against the City of St. Louis Park, is hereby dismissed with prejudice and without cost to either the City of St. Louis Park or defendant Reilly Tar and Chemical Corporation.

RESPONSE: Admit.

ALTERNATIVE INTERROGATORY NO. 20: If you deny the truth of this statement, please state the facts upon which you rely for such denial and identify by name and address each person who may provide information to support such facts.

RESPONSE: Not applicable.

REILLY TAR & CHEMICAL
CORPORATION

By _____
Robert Polack
Vice President and General Counsel

Subscribed and sworn to
before me this 5th day of

April, 1983.

Veronica M. Bledsoe

VERONICA M. BLEDSOE
MY COMMISSION EXPIRES JANUARY 29, 1986



